IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6930 of 1999

to

FIRST APPEAL No 6952 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BIPINBHAI MAGANBHAI

Appearance:
MR UMESH TRIVEDI, ld.AGP for appellants
MR GM AMIN for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 23/01/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

These First Appeals, total 23 in number, under Sec.54 of the Land Acquisition Act, 1894 read with Sec.96 of the Code of Civil Procedure are directed against the judgment and order dated 17th Dec.1997 passed by the Judge, City Civil Court No.10, Ahmedabad in Land Acquisition Cases Nos.28 to 50 of 1992. All these Land Acquisition Cases were decided by a common judgment and order dated 17th Dec.1997 as aforesaid and therefore, we propose to decide all these First Appeals by this common judgment and order as under:

2. The lands of village Ghodasar (which are now within the limits of the Municipal Corporation of Ahmedabad) were sought to be acquired for Express Highway of Ahmedabad to Baroda. The proposal was submitted by the Department of State Government for acquisition of these lands and the notification under Sec.4 of the Act was issued on 29th Jan.1989. The notification was also published in the Government Gazette and it was affixed at different sites. Thereafter the notification under Sec.6 was published on 29th Aug.1989 and the proceedings were completed under Sec.9 and 10 of the Act. The award was passed by the Addl. Special Land Acquisition Officer under Sec.11 of the Act whereby he determined the rate of compensation with regard to the land as well as superstructure. The Land Acquisition Officer determined the rate of compensation at Rs.40/- per sq.mtr. The matter was taken to the Reference Court by the claimants and the Reference Court, i.e. City Civil Court, Court No.10, Ahmedabad has decided the references determining the additional compensation at the rate of Rs.260/- per sq.mtr. for the open land and for the super structure, it has been ordered that the claimants shall be paid after deducting 25% from the report of Mr.Rami (Expert Govt. approved Valuer) for the amount claimed. The Reference Cases Nos.40, 41 and 50 of 1992 have been dismissed for the purpose of compensation for super structure as no evidence was led on behalf of the claimants in these three cases. The Reference Court has also granted the allied reliefs as mentioned in the operative part of the order itself.

3. It is given out by both the sides that similar acquisition was made in respect of the lands of village Khokhra (which is also now in the City limits of the Municipal Corporation of Ahmedabad). The lands of

village Khokhra which were sought to be acquired were also adjoining to the lands of village Ghodasar concerned in these matters. The notifications under Sec.4 and 6 are also of the same date in case of the lands which were acquired from village Khokhra. In these matters also, the Land Acquisition Officer determined the rate at Rs.40/- per sq.mtr. and the Reference Court granted the compensation at the rate of Rs.260/- per sq.mtr. for the open land and for the super structure, similar relief was granted. The Reference Court had decided the Reference Cases on the same date by a separate order with regard to the lands of village Khokhra, i.e. on 17th Dec.1997. Against that decision of the Reference Court in relation to the lands of village Khokhra, a Group of First Appeals Nos.2043 to 2069 of 1999 were preferred before this Court and these appeals were decided on 11th Aug.2000 by a common judgment and order by the Division Bench (Coram: M.H.Kadri & C.K.Buch, JJ.). The operative part of this judgment dated 11th Aug.2000 rendered by the Division Bench is reproduced as under:

"In the result, these First Appeals are partly allowed. Judgment and award passed by the Reference Court is modified to the extent that claimants are entitled to the amount of compensation qua lands acquired at the rate awarded by the Reference Court, but the amount awarded qua super-structure by the Reference Court is reduced to 50%. Award be modified and drawn accordingly. Each of the claimants shall be entitled to 30% solatium on the additional amount of compensation awarded as per Sec.23(2) of the Act and 12% increase p.a. from the date of publication of notification under Sec.4 of the Act till the date of award under Sec.23(1-A) of the Act. Claimants are also entitled to interest on the additional amount at the rate of 9% p.a. for the first year and 15% p.a. for the remaining years from the date of taking over possession till the realisation of the amount. It is, however, clarified that the amount payable under Sec.23(1-A) shall not carry solatium and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra v/s. Maharau Srawan Hatkar, reported in JT 1995(2) SCC 583. The appellant is directed to deposit the amount of compensation within four months from the date of receipt of writ of this order. No order as to costs. Office is directed to draw decree in terms of this judgment."

4. It is submitted by both the sides that the present cases are exactly identical and the same may be decided on the same lines as the evidence produced in both the cases is also identical, rather same. Even the Government approved Valuer is the same, whose report was relied upon.

5. We have heard learned Counsel and have gone through the Division Bench decision dated 11th Aug.2000 as also the impugned judgment and order dated 17th Dec.1997 passed by the City Civil Court, Court No.10, Ahmedabad. We find that the present cases are fully covered by the aforesaid Division Bench decision and we find that the request made by both the sides that these cases may also be decided on the basis of the decision of the Division Bench dated 11th Aug.2000 in First Appeals Nos.2043 to 2069 of 1999 is reasonable and all these cases deserve to be decided accordingly.

6. We, therefore, find that the judgment and award passed by the Reference Court on 17th Dec.1997 deserves to be modified to the extent that the claimants are entitled to the amount of compensation qua the lands acquired at the rate awarded by the Reference Court, i.e. Rs.260/- per sq.mtr. as additional compensation over and above the rate which was determined by the Land Acquisition Officer, but the amount awarded qua the super structures by the Reference Court is reduced to 50% and we direct that the award be modified and drawn accordingly. Each of the claimants shall be entitled to 30% solatium on the additional amount of compensation awarded as per Sec.23(2) of the Act and 12% increase per annum from the date of publication of the notification under Sec.4 of the Act till the date of award under Sec.23(1-A) of the Act. The claimants are also entitled to interest on the additional amount at the rate of 9% per annum for the first year and 15% per annum for the remaining years from the date of taking over possession till the realisation of the amount. It is, however, clarified that the amount payable under Sec.23(1-A) shall not carry solatium and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra v/s. Maharau Srawan Hatkar, reported in JT 1995(2) SCC 583.

7. All these 23 First Appeals are partly allowed as above with no order as to costs. It is expected that the appellants shall pay the compensation within a period of four months from the date of receipt of the certified copy of this order. Decree be drawn in terms of this

judgment.

(M.R. Calla, J.)

(J.R. Vora, J.)

Sreeram.